

LOWELL DURHAM

IBLA 79-113

Decided April 10, 1979

Appeal from decision of the Redding, California, District Office, Bureau of Land Management, rejecting an application for a temporary tramway right-of-way across public lands. CA 030-R/W61

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way—Rights-of-Way: Applications—Rights-of-Way: Federal Land Policy and Management Act of 1976

Under the Federal Land Policy and Management Act of 1976, approval of a right-of-way for a timber access road is discretionary. A decision by BLM rejecting such an application will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

APPEARANCES: Lowell Durham, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 1, 1977, Lowell Durham filed an application for a temporary tramroad right-of-way, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 et seq. (1976), with the Redding, California, District Office, Bureau of Land Management (BLM). This application was amended and refiled by Durham on March 17, 1978. Durham sought to be allowed to build a road across a portion of the public lands so that he could harvest timber on a private tract which he owns. His tract is accessible through both private and public lands.

In June 1978, the proposed route for this road was examined by representatives of BLM, who prepared field reports concerning effects

of building a road there. On November 2, 1978, BLM issued an environmental analysis which addressed the effects of granting Durham's application. On November 2, 1978, BLM notified Durham by letter that his application had been rejected, stating as follows: "An assessment of the proposed right-of-way identifies significant residual impacts that would result from road construction. Road construction in the proximity of Indian Creek will lead to increased siltation with an associated loss in fish habitat." Durham (appellant) has appealed this decision.

[1] Specifically, appellant's application for a right-of-way was made pursuant to section 501(a)(6) of FLPMA, 43 U.S.C. § 1761(a)(6) (1976), which provides as follows: "The Secretary, with respect to the public lands * * * [is] authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for * * * roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock, driveways, or other means of transportation [exception not applicable]."

Approval of an application for a right-of-way under FLPMA is a discretionary matter. Stanley M. Leach, 35 IBLA 53 (1978). A decision by BLM rejecting an application for a right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard to the public interest. Id. at 55.

While BLM's decision merely states in a conclusory manner that appellant's constructing a road would have significant residual impacts and would result in increased siltation and loss of fish habitat in Indian Creek, and does not describe any of the considerations upon which this conclusion is based, we nevertheless affirm it. The record contains several reports indicating that the soils affected by appellant's proposed route have a "high erosion hazard," and that removal of vegetation and disturbance of the surface associated with building the road would accelerate soil erosion and would cause sedimentation of Indian Creek. The danger of erosion is increased by the the extremities of the slopes in the area and of the road gradient. ^{1/} The record indicates concern by both BLM and California State Department of Fish and Game officials to attempt to rehabilitate Indian

^{1/} The reports indicate that the road gradient would "approach 30%," the side slopes average about 70 percent, some approaching 89-90 percent, with four steep, narrow drainages which empty directly into Indian Creek. All soils have moderate to high erosion hazard. The road would have to traverse two deep, narrow drainages which would require extensive fill and sufficient culvert pipe to accommodate runoff flows. Aside from erosion and stream siltation, numerous other environmental hazards were identified in the reports, although they were not mentioned in the decision.

Creek by preventing further damage to it from sedimentation. Prevention of further siltation of Indian Creek is expressly included in the management framework plan for the area drafted in June 1975. We conclude that BLM's decision rejecting appellant's application was the result of a reasoned analysis of the environmental factors present, and that the record supports its correctness.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

James L. Burski
Administrative Judge